

was in addition ordered to pay to the respondent punitive damages of Shs.2, 000,000/ for under-selling the tractor when the parties had already agreed a settlement. Charles Oundo was ordered to suffer the respondent's costs of the suit. The judgment was delivered on 26-7-96.

On 13-3-97, Counsel for Charles Oundo and Counsel for the respondent appeared before the trial Judge and argued Oundo's application for stay of execution pending appeal to this court. The application succeeded. The court then rose.

It reconvened shortly afterwards. This time a Mr. Agaba appeared for the applicant. Counsel for the respondent was absent. His explanation now is that he was not aware that there would be a further consideration of the case later that day.

Mr. Agaba was asked by the court whether he was on record. He replied thus:

"I have just filed in some papers for review of your judgment. I am now applying for an interim administrative order for stay of execution against 2nd applicant until application is heard"

We do not see how a Court can issue an administrative order in judicial proceedings. All the same on 14-3-97, the learned Judge issued the interim order for stay of execution pending review of her judgment. The respondent brought his appeal on 18-3-97, challenging that order of stay of execution. The competency of the appeal is now challenged on the grounds:

(a) that no appeal lies against an interim order and (b) that if an appeal lies then it lies not as of right but with leave of this Court which leave the applicant has neither sought nor obtained.

In reply, Mr. Kakuru, Counsel for the respondent, contended that the so called interim order is not an order as it was made in a vacuum in that when it was made there was no application for review of judgment pending in the High Court, which fact was conceded by Counsel for the applicant. Clearly that does not answer the vital question whether the appeal is competent or not; it merely goes to the merits of the appeal which is not in issue at this stage. The fact that an appeal is likely to succeed does not in our view entitle a party to appeal as of right.

There is right of appeal from all orders and decrees passed by the High Court to this Court (s.68) CPA except decrees passed by the High Court with the consent of the parties. Appeals in such

decrees are expressly prohibited by s.69 (2) of CPA. Whether appeal lies as of right or with leave depends upon whether the order or decree was interim or final.

Orders that are appealable as of right are spelt out in Order 40(1) (1) of the CPR. These do not include an order staying execution of a decree. Under Order 40(1) (2) an appeal may not lie from orders not covered under Order 40(1) (1) except with leave of the trial Court or the Court to which the appeal would lie if leave were granted. Under Order 40(1) (3) the application for leave to appeal shall in the first instance be made to the trial Court and it has to be made by motion on Notice. This is the procedure the respondent had to follow before bringing his appeal since the order appealed from is not appealable as of right. He did not.

It follows that his appeal is incompetent. This application to strike it out has merit. It is allowed. The respondent's appeal is struck out as incompetent. The respondent shall bear the applicant's costs of the application.

DATED at Kampala This 19th Day of: November 1997

S. T. MANYINDO

DEPUTY CHIEF JUSTICE

C. M KATO

JUSTICE OF APPEAL

J.P.BERKO

JUSTICE OF APPEAL